

Internal Revenue Service

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PLR-151216-06

Date: FEBRUARY 20, 2007

LEGEND:

Date 1	=
Date 2	=
Date 3	=
Settlor	=
Wife	=
Daughter	=
Grandson 1	=
Grandson 2	=
Trust	=
Trustee	=
Court	=

Dear :

This is in response to your September 12, 2006 letter and other correspondence requesting a ruling concerning generation-skipping transfer (GST) tax consequences of the proposed division of Trust.

You have requested the following rulings:

1. The proposed division of Trust would not adversely affect Trust's status as exempt from the GST tax.
2. Subtrusts 1 and 2, the two subtrusts created as a result of the proposed division, will remain exempt from the GST tax.

FACTS

On Date 1, Settlor executed Trust. Article IV of Trust provides that at the end of each quarter the trustee is to pay the entire net income to Settlor. Upon Settlor's death, the trustee is to pay the entire net income to Wife, if Wife survives Settlor. Upon Wife's death, the trustee is to pay the entire net income to Daughter.

Article IV further provides that upon the death of Daughter, the trustee is to pay the annual net income in equal shares, per stirpes, to and among the children of Daughter during the lifetime of Grandson 1. In the event of an emergency, the trustee may pay principal to any income beneficiary to meet such emergency.

Article V provides, in relevant part, that the trust will continue in full force during the lifetime of Grandson 1. Upon the death of Grandson 1, the trust is to terminate and one-half of the trust corpus and any accumulated income is to pass free of trust to the living issue of Grandson 1. The balance of the trust and accumulated income is to be distributed to Grandson 2. If Grandson 2 predeceases Grandson 1, the trust corpus and accumulated income is to be distributed per stirpes to the living issue of Daughter.

Settlor and Wife are deceased. Daughter died on Date 2 and was survived by Grandson 1 and Grandson 2 and their descendants.

On Date 3, Trustee filed a petition with Court to divide Trust into two equal and separate Subtrusts. The terms of the Subtrusts will be the same as the terms of Trust, except that Subtrust 1 will benefit Grandson 1 and his descendants and Subtrust 2 will benefit Grandson 2 and his descendants. The Court approved the order, subject to a favorable private letter ruling.

LAW AND ANALYSIS

Rulings 1 and 2

Section 2601 imposes a tax on every generation-skipping transfer. The term "generation-skipping transfer" is defined in section 2611 as a taxable distribution, a taxable termination, or a direct skip.

Under section 1433(a) of the Tax Reform Act of 1986 (Act) and section 26.2601-1(a) of the Generation-Skipping Transfer (GST) Tax Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under section 1433(b)(2)(A) of the Act and section 26.2601-1(b)(1)(i), the GST tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under section 26.2601-1(b) will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer. A modification that is administrative in nature that only indirectly increases the amount transferred will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST tax is divided into two trusts. Under the facts presented, the division of a trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in section 2651) than the person or persons who held the beneficial interest prior to the division, and the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Accordingly, the two partitioned trusts will not be subject to the provisions of chapter 13.

In this case, the proposed division will not result in a shift of any beneficial interest in Trust to any beneficiary who occupies a generation lower than the persons holding the beneficial interests. Further, the proposed division will not extend the time for vesting of any beneficial interest in the new trusts beyond the period provided for in Trust. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed division of Trust would not adversely affect Trust's status as exempt from the GST tax and that Subtrusts 1 and 2 will remain exempt from the GST tax.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

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